

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

AMERICAN CIVIL LIBERTIES UNION,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION,

AMERICAN CIVIL LIBERTIES UNION
FUND OF MICHIGAN,

and

JOHN RICARDO “JUAN” COLE,

Plaintiffs;

Hon.

v.

Case No.

CENTRAL INTELLIGENCE AGENCY,

OFFICE OF THE DIRECTOR OF
NATIONAL INTELLIGENCE,

and

FEDERAL BUREAU OF INVESTIGATION,

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Privacy Act of 1974, 5 U.S.C. § 552a, for injunctive and other appropriate relief, seeking the immediate expedited processing by Defendants the Central Intelligence Agency (“CIA”), the Office of the Director of National Intelligence (“ODNI”), and the Federal Bureau of Investigation (“FBI”) of the records request submitted by Plaintiffs American Civil Liberties

Union and American Civil Liberties Union Foundation (collectively “ACLU”), American Civil Liberties Union Fund of Michigan (“ACLU of Michigan”), and University of Michigan Professor John Ricardo “Juan” Cole, seeking records relating to Professor Cole.

2. On June 15, 2011, the *New York Times* reported on its front page that the White House and the Office of the Director of National Intelligence had asked the CIA to unlawfully gather information on Professor Cole in order to discredit him. *See* Exhibit A, James Risen, *Ex-Spy Alleges White House Sought to Discredit Critic*, N.Y. Times, June 15, 2011, at A1.

Professor Cole was reportedly targeted because he was an outspoken critic of the Iraq War, primarily through his blog, Informed Comment. *See* <http://www.juancole.com>.

3. Under the National Security Act of 1947 and Executive Order 12333, the CIA may not undertake domestic activities unless they relate to foreign intelligence or counter intelligence, and unless the CIA acts in coordination with the FBI. 50 U.S.C. § 403-4a (2011); EXEC. ORDER NO. 12333, 3 C.F.R. 200 (1981). Neither the CIA nor the FBI may investigate an American citizen simply for exercising his First Amendment rights. The *New York Times* article reports that the CIA did in fact gather information on Professor Cole.

4. On June 23, 2011, Plaintiffs submitted a FOIA request (“the Request”) to the CIA, ODNI, FBI, and Department of Justice (“DOJ”) requesting on an expedited basis any and all documents relating to or naming Professor Cole. *See* Exhibit B.

5. To date, the Director of Public Affairs of DOJ has granted Plaintiffs’ request for expedited processing, but apparently only as relates to documents that might be available in the offices of the Attorney General and the Deputy Attorney General. *See* Exhibit C.

6. The Office of the Director of National Intelligence denied Plaintiffs' request for expedited processing, stating that the Request failed to show a "compelling need." *See* Exhibit D.

7. Neither the CIA nor the FBI has responded to Plaintiffs' request for expedited processing, despite the requirement of the Freedom of Information Act that the agencies respond within 10 days of filing a request. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I).

8. At the heart of this action is whether the CIA, FBI and other agencies undertook an investigation of a U.S. citizen for the simple fact that he was a critic of U.S. government policy. Such a chilling of First Amendment freedoms, if it did in fact take place, would send shock waves through the public arena, threatening to limit the open debate that makes our democracy strong. The public has an urgent need to know whether government agencies are sweeping aside the law and spying on Americans who do nothing more than speak their minds. This Court should grant Plaintiffs an injunction requiring the CIA, ODNI, and FBI to immediately grant Plaintiffs expedited processing of their FOIA request.

Jurisdiction and Venue

9. This Court has subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and (a)(6)(E)(iii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701-706. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

Parties

10. Plaintiff American Civil Liberties Union is a nationwide, non-profit, nonpartisan organization headquartered in New York, New York with more than 500,000 members dedicated to the constitutional principles of liberty and equality. The ACLU is committed to ensuring that

the American government complies with the Constitution and laws, including its international legal obligations, in matters that affect civil liberties and human rights. The ACLU is also committed to principles of transparency and accountability in government, and seeks to ensure that the American public is informed about the conduct of its government in civil liberties and human rights matters.

11. Plaintiff American Civil Liberties Union Foundation is a separate section 501(c)(3) organization headquartered in New York, New York that educates the public about civil liberties and employs lawyers who provide legal representation free of charge in cases involving civil liberties.

12. Plaintiff American Civil Liberties Union Fund of Michigan is a section 501(c)(3) non-profit, non-partisan organization headquartered in Detroit, Michigan that educates the public about civil liberties and provides legal representation free of charge in civil liberties cases throughout Michigan.

13. Plaintiff Professor John Ricardo “Juan” Cole is a U.S. citizen, a University of Michigan professor, and a public figure as an academic, blogger and media commentator. Professor Cole resides in Ann Arbor, Michigan.

14. Defendant Central Intelligence Agency is a department of the Executive Branch of the United States government with headquarters in McLean, Virginia, and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

15. Defendant Office of the Director of National Intelligence is a department of the Executive Branch of the United States government with headquarters in Washington, D.C., and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

16. Defendant Federal Bureau of Investigation is a unit of the Department of Justice of the United States government with headquarters in Washington, D.C., and is an agency within the meaning of 5 U.S.C. § 552(f)(1).

Factual Background

17. On June 15, 2011, the *New York Times* reported that Glenn Carle, a former CIA counterterrorism official, disclosed that he had been assigned to unlawfully gather information on Professor Cole, a U.S. citizen living in the United States, in order to discredit him. *See* Exhibit A. The Administration reportedly wanted to “get” Professor Cole, because he spoke out against the Iraq War. *Id.*

18. As Plaintiffs demonstrated in the Request, there has been a significant amount of public interest since the *New York Times* published this story. *See, e.g.,* Editorial, *Investigate Bush Team’s Effort To Use CIA Against Blogger*, Boston Globe, June 18, 2011, available at <http://nyti.ms/iCzrYy>; *Did the Bush White House Ask the CIA to Discredit a U.S. College Professor?*, CNN Blog, June 17, 2011, <http://bit.ly/kGCecr>; *Ex-Spy Says U.S. Officials Went After Iraq Critic: Report*, AFP, June 17, 2011, available at <http://bit.ly/mkVfuq>; Niraj Warikoo, *University of Michigan Professor Wants Investigation Into Claim By Former Official That White House Asked CIA to Smear Him*, Detroit Free Press, June 17, 2011, available at <http://bit.ly/kKXaFN>; Eartha Jane Melzer, *U-M Professor Calls for Investigation of Alleged CIA Spying Against Him*, Mich. Messenger, June 16, 2011, available at <http://bit.ly/j5bOEA>; Spencer Ackerman, *Report: Bush White House Wanted CIA to Discredit Blogger*, Wired, June 16, 2011, available at <http://bit.ly/lOrCzk>; *Former CIA Officer: Bush Admin Tried to Smear Prominent Academic, War Critic*, Democracy Now!, June 16, 2011, available at <http://bit.ly/lOrCzk>; John Hudson, *Bush-Era Spy Says White House Tried to Smear Juan Cole*, Atlantic Wire, June 16,

2011, available at <http://bit.ly/kcep3L>; Emma Mustich, *Did the CIA Spy on Iraq War Critic Juan Cole?*, Salon, June 16, 2011, available at <http://bit.ly/leNodz>; Andrew Sullivan, *The Politics of Personal Destruction*, Daily Beast, June 16, 2011, available at <http://bit.ly/ixBkHQ>; Natasha Lennard, *A Juan Cole Reading List, 2005-2006*, Salon, June 16, 2011, available at <http://bit.ly/jOAPCX>; Kevin Drum, *Bush v. Cole*, Mother Jones, June 15, 2011, available at <http://bit.ly/mrANtM>.

19. The requested records are particularly important to the national debate as the Senate Intelligence Committee begins to investigate government officials' involvement in any decision to unlawfully spy on or investigate Professor Cole. See, e.g., Joan McCarter, *Senate Intelligence Committee Probing Bush CIA Targeting of Iraq War Critic*, Daily Kos, June 20, 2011, available at <http://bit.ly/m1IGjH>; *Investigation Opens on Bush-Era Attempts to Discredit Iraq War Critic, Professor Juan Cole*, Democracy Now!, June 20, 2011, available at <http://bit.ly/khFWE1>; Marisa Schultz, *Senate Committee to Review Claims bush Administration Spied on U-M Professor*, Detroit News, June 18, 2011, available at <http://bit.ly/jyCVQR>; Zachary Roth, *Senate to Probe Charges That Bush White House Pressed CIA to Dig Up Dirt on Iraq War Critic*, Yahoo News Blog, June 17, 2011, available at <http://yhoo.it/jcJD1y>; Greg Sargent, *Senate Intel Committee Probing Whether Bush Officials Sought to Smear Iraq War Critic*, Washington Post Blog: The Plum Line, June 17, 2011, available at <http://wapo.st/iJw8XT>.

FOIA Request

20. On June 23, 2011, the ACLU submitted a request under the FOIA and Privacy Act for any and all documents naming or relating to Professor Cole.¹ The Request was

¹The Request stated:

submitted to the designated FOIA offices of the CIA, ODNI, FBI, and DOJ, the DOJ's Office of Information Policy, and the DOJ's Office of Public Affairs, as required by DOJ FOIA regulations. *See* 28 C.F.R. § 16.5(d)(2).

21. Plaintiffs sought expedited processing of the Request on the grounds that there is a "compelling need" for these records because the information requested is urgently needed by an organization primarily engaged in disseminating information in order to inform the public about actual or alleged Federal Government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. 16.5(d)(1)(ii); 32 C.F.R. § 1700.12(2); 32 C.F.R. § 1900.34(c)(2).

Defendants' Responses to the Request

22. By fax and letter dated June 29, 2011, the DOJ's Office of Information Policy informed Plaintiffs that the Director of Public Affairs had granted Plaintiffs' application for expedited processing, but apparently only as regards the Attorney General and the Deputy Attorney General. *See* Exhibit C. The letter did not mention the FBI, and repeated phone calls to clarify the matter have gone unanswered.

The documents requested include, but are not limited to, any e-mails, letters, faxes, or other correspondence, memoranda, contemporaneous notes of meetings or phone calls, reports or any other material relating to the gathering, collecting, copying, collating, generating or other use of information and material regarding Professor Cole, including any information or material that may have been gathered, collected, copied, collated, generated or otherwise used. This should include, but not be limited to, any requests or orders that information be gathered, any decisions regarding those requests or orders, any response or material responsive to those requests or orders or decisions regarding those requests or orders, and any inquiries about those processes. This should include, but not be limited to, any internal investigation of or discussion relating to federal government activity regarding and relating to Professor Cole. Personnel involved include, but are not limited to, Glenn L. Carle, David Low, David Gordon, John A. Kringen, and John D. Negroponte. The materials should include, but not be limited to, all relevant material generated by and directed toward those men, their assistants and staff. Naming these officials in no way should be construed to limit the search for relevant documents throughout the governmental entities to whom the Request was made.

See Exhibit B at 3-4.

23. On the same day, the Office of the Director of National Intelligence mailed a letter denying Plaintiffs' request for expedited processing, stating the request failed to show a "compelling need." *See* Exhibit D.

24. Neither the CIA nor the FBI has responded to Plaintiffs' request for expedited processing, despite the requirement of the Freedom of Information Act that the agencies respond within 10 days of filing. 5 U.S.C. § 552(a)(6)(E)(ii)(I).

Causes of Action

25. Plaintiffs incorporate by reference all prior paragraphs.

26. Defendants' failure to grant Plaintiffs' request for expedited processing violates FOIA, 5 U.S.C. § 552(a)(6)(E), CIA regulations, 32 C.F.R. § 1900.34(c), DOJ regulations, 28 C.F.R. § 16.5(d)(4), and ODNI regulations, 32 C.F.R. § 1700.12.

Requested Relief

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Order Defendants to immediately process on an expedited basis all records responsive to the Request;
- B. Award Plaintiffs their costs and reasonable attorneys' fees incurred in this action; and
- C. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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